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REMARKS

Enclosed are materials put together to propose the concept of remedial legislation for divorced/widowed spouses of Foreign Service officers omitted from coverage of the Foreign Service Act of 1980. I have been helping these women prepare

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Association of American Foreign Service Women
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STATEMENT ON THE CONCERNS OF SPOUSES OF FOREIGN
SERVICE EMPLOYEES DIVORCED BEFORE ENACTMENT
OF THE FOREIGN SERVICE ACT OF 1980

As members of the Association of American Foreign Service Women, we should like to speak to you of the Foreign Service Act of 1980, which provided retirement benefits and a survivor annuity to spouses of Foreign Service employees, divorced after a marriage of 10 or more years. This provision was long overdue, and we are pleased that Congress recognized the inequity of years past that denied former spouses the right to these benefits. In acknowledging this right, Congress and others took note of the unique prohibitions on their employment incurred during many years of marriage. Further, their official duties and the hardships faced abroad, combined with their inability to qualify for Social Security, differentiated them from the spouses of military personnel and other Federal employees and made the legislation inapplicable as a precedent for any agency without a foreign mission.

However, as you may know, Congress did not make these provisions retroactive, and those divorced prior to February 15, 1981, were left unprotected. In the original hearings, Congress recognized the importance of taking another look at retirement and survivor benefits for those Foreign Service spouses who did not benefit from the 1980 bill. The Conference Report on the Foreign Service Act of 1980 said that, "A compromise was reached on the issue of annuities for former spouses of members of the Foreign Service which removes completely the automatic retroactivity features of the original proposal." Thus, the law itself created a small group of older women who although identical in their qualifications for entitlement were set aside.

The plight of these few former spouses not covered by the 1980 Act is serious. Informal interviews and a survey by the Women in Transition group indicated that these women typically had been married 25 years or more, some as long as 30 to 40 years. The women usually had spent 20 or more years working for the Foreign Service. Their service before 1972 was evaluated along with that of their husbands, as official government policy. When divorced after long years of unpaid government service abroad, these women were left with no employment record, no modern skills, no Social Security, and exorbitantly expensive medical insurance. In many cases, alimony was not given; if awarded, alimony has proved to shrink with inflation and ceases with the employee's death. These women must face entry into the US workforce well into mid-life at an age when officers are contemplating retirement. Their low income, little chance for job advancement, and relatively few number of years to work clearly deny many of them the capability of accruing enough funds not only to provide for their daily existence but also for adequate subsistence in their old age.

We propose for your consideration that these women receive retirement and survivor benefits at the level to which their service would have otherwise entitled them at the time of divorce. These benefits could be awarded when

FS Spouses Cont'd.

a wife reaches retirement age herself. We propose that the funds be drawn in their names from general funds, thereby not jeopardizing the rights of a second spouse, if there is one. Precedents for such direct payments can be seen in the direct grants made to widows of Foreign Service officers in the past.

We reject the notion that the cost of this proposal would be prohibitive and incalculable. The Association of American Foreign Service Women has estimated the total number of eligible women at 200; thus, the outflow of funds would be minimal.

As good American citizens who have long served their country, their Government, and their families, these women have earned your consideration.

FACT SHEET

On Proposed Legislation to Provide Retirement Benefits for Foreign Service Spouses Excluded From Coverage by the Foreign Service Act of 1980 (P.L. 96-465).

INTRODUCTION

In recognition of their service to their country, the Foreign Service Act of 1980 (P.L. 96-465) vested eligible spouses of Foreign Service (FS) officers with rights to a pro-rata share of retirement and survivor benefits earned during marriage.* For reasons of political compromise, the Act left equally deserving FS spouses, who were divorced or widowed before the effective date of the Act, 15 February, 1981, without such protection.

RETIREMENT INCOME

Under P.L. 96-465, eligible women are entitled to a pro-rata share of one-half of the employee's FS retirement annuity earned during marriage, subject to spousal agreement or court order and terminating upon the remarriage of a former spouse before age 60.

Women who were divorced prior to 15 February 1981, regardless of the duration of marriage, and those divorced later whose marriages lasted less than 10 years, can obtain direct payment of a share of retirement under court order (pursuant to Executive Order 11245 dated 18 July, 1979, based on similar legislation applicable to the Civil Service). There is, however, no presumption that these women are entitled to the amount of the annuity earned during marriage, and the granting of benefits is left to the discretion of the court.

SURVIVOR ANNUITIES

As a result of the new Act, eligible former wives are entitled to a pro-rata share of 55 percent of the employee's annuity earned during the marriage. This entitlement may be varied by spousal agreement or court order, but, in any case, it may not exceed 55 percent of the employee's own annuity, even if the 55 percent amount must be split between current and former spouses.

Although they may have served many years abroad, FS spouses divorced prior to the effective date were excluded from coverage by the Act. Those whose former husbands are not yet retired may, at his discretion, be awarded that share of the survivor annuity to which there is no legal claim by a new wife. FS spouses already widowed, if not otherwise provided for, get nothing.

WHAT LEGISLATION IS REQUESTED?

We ask that a retirement annuity be provided to each of the otherwise eligible former spouses of FS officers who were excluded from the benefits established by the 1980 FS Act. We request that retirement benefits be paid when the women themselves reach a retirement age that is customarily acceptable in the Foreign Service, for example 55 years, and that the annuity be so computed that a spouse receives the amount to which she would have been entitled at the time of divorce, plus subsequent cost-of-living adjustments. We propose that the funds be drawn in each spouse's name from general revenues, thereby not jeopardizing the rights of a second spouse, if there is one.

* To be eligible a woman must have been married to the FS employee for 10 years or longer during government service, at least some of which must have been as part of the officer's active foreign service. We speak of women, because no male spouses have been married to FS female employees for the requisite 10 years. Until 1972 women employees were forced to resign if they married.

WHAT WOULD IT COST THE GOVERNMENT TO PROVIDE THESE BENEFITS?

Because the number of women who would receive these benefits is small—the Association of American Foreign Service Women (AAFSW) estimates 200—and because even this small number will be reduced to none over time, the burden on the Federal Government should be minimal. Some of these already older women can be expected to die at an earlier age as the result of illnesses incurred or aggravated through years of difficult living in developing countries.

We estimate that the initial cost would be less than \$2 million per year. Generally the full annuity to which a spouse would be eligible is estimated to be about \$11,000 per year. A pro-rata share based on the number of years married during the active career of the FS officer would reduce this amount in many—if not most—cases.

WHY SHOULD THESE WOMEN BE PROVIDED WITH RETIREMENT SECURITY?

As diplomatic wives, these women served overseas and performed valuable work for this nation, often under difficult and sometimes dangerous circumstances. Cumulatively, they represent hundreds of years of dedicated unpaid work, which they were told was in the best interests of their country.

The excluded spouses are uniquely deserving because most served prior to 1972 when they were required—either officially or by tradition—to accept and to fulfill a variety of official duties. Their performance was evaluated by U.S. Government officials and was recorded in the fitness reports and personnel files of their officer husbands. Their compliance with this policy of "two employees for the price of one" has left many facing extreme hardships of poverty in their later years.

WHAT WERE THE SPECIAL PROBLEMS FACED BY THESE WOMEN AT THE TIME OF DIVORCE OR WIDOWHOOD?

During their years of marriage, these women were assured that their future was secure because official government forms identified them as the beneficiaries of the FS retirement plan. But at divorce, without their permission and in most cases without prior notification, the names of many of these women were removed from these forms. New names were inserted, identifying strangers as beneficiaries of the fund to which the FS women had contributed for as long as 30 or 40 years, as evidenced by their annual income tax returns. Some widows found that their names had been eliminated when their husbands retired because these officers were unwilling to receive reduced annuities to provide such protection.

At time of divorce, these generally older women have faced a variety of difficulties. They found that their transient life made establishing legal domicile difficult. Often they were total strangers in the jurisdiction of the court where their divorce proceedings were heard. They found access to courts expensive and with their years of unpaid service, they often did not have enough money to be represented adequately in a court of law. They found that jurists were unaware of the special conditions and responsibilities of Foreign Service life, including the pre-1972 government infringements on their lives overseas. Pension benefits were not considered as property and their settlements were lower accordingly.

Since divorce they have found divorce settlements difficult to enforce as an officer follows his career, moving from one country to another. Moreover, alimony is no substitute for a portion of the pension and survivor benefits, since alimony shrinks with inflation and ceases entirely with the death of the officer.

SHOULDN'T THESE WOMEN EARN THEIR OWN LIVING?

When these former spouses went into the job world, they faced special difficulties. Some did not have job records; others had severely outdated job records, having been out of the formally recognized employment world for perhaps 20 to 25 years. Frequent moves and family and official responsibilities, as well as legal, cultural and linguistic barriers prevented their paid employment overseas. When they could work, their constant mobility prevented them from investing in any retirement plan.

If these women have been fortunate enough to find employment, their age and years out of the work force has almost guaranteed them low-paying jobs with few fringe benefits. Their limited number of years of employment before old age forces them to stop working will give them little chance for career development or for building an adequate retirement of their own. In a survey conducted by the AAFSW almost all of the former spouses in the Washington area reported that their divorce settlements contained no provisions for retirement.

Many of these women are unable to hold full-time jobs because of residual health problems exacerbated by inadequate medical care abroad. In the Washington area alone, the AAFSW survey showed that three former wives are going blind, one from lack of money for a needed operation; two have Hodgkins disease, at present in remission; one has had to give up chemotherapy for breast cancer because of the cost. Several women have children emotionally disturbed by their life abroad; two have minor children with severe physical disabilities. Some women, unable to find work or to hold a job, are surviving on the charity of church or family.

WHAT ADVANTAGES ARE INHERENT IN THIS PROPOSED LEGISLATION?

This national law would ensure fair treatment for women who have served their country through often difficult years abroad by giving them benefits equal to those already given to their diplomatic sisters. This proposal recognizes a dependent spouse's share in the economic partnership of marriage, as did the precedent legislation, the Act of 1980. It would establish guidelines that are uniform, clear, and calculable for all former spouses not covered by the 1980 legislation. It would not be dependent on a wife's financial ability to go into court. Equal Federal service would earn equal benefits.

WOULD THIS BILL PERMIT THE FEDERAL GOVERNMENT TO USURP THE RESPONSIBILITIES OF STATE COURTS?

Because this proposed legislation would have no bearing on the legal procedures of divorce, divorce settlements and second marriages—in the past or in the future—will be unaffected.

WILL THIS LEGISLATION APPLY TO FS SPOUSES WHO WERE ONLY BRIEFLY MARRIED?

As proposed, a former spouse or widow must have been married at least 10 years to be entitled to retirement benefits. According to a survey conducted by the AAFSW, the women to benefit from the proposed legislation are older women; the median number of years married is 25; the median number of FS-related years is 20; and the median number of years abroad is about 15.

WHAT IS THE COST OF NOT PROVIDING RETIREMENT BENEFITS TO THIS GROUP OF DIVORCED AND WIDOWED FS SPOUSES?

If these women are not awarded the retirement benefits they have earned during their years of service abroad for the Federal government and they have no private income of their own, the taxpayers will pick up the costs of food stamps, subsidized housing, and Medicaid, and the number of these women requiring welfare assistance can be expected to grow as those now working are forced by old age and ill health to leave the work force. Others will, or have already, become dependent on their families; their dependency means tax exemptions for the family members supporting them, thus reducing the tax monies received by state and Federal governments.

WOULD THIS LEGISLATION BE AN ADMINISTRATIVE BURDEN ON THE EMPLOYING AGENCY?

In 1965 Social Security amendments required retirement benefits to be paid to divorced spouses of Social Security beneficiaries. In hearings, the Commissioner of Social Security testified that "the Social Security Administration has experienced no major problems in administering the divorced wife or surviving divorced wife provisions of the Social Security Act."

WHAT WERE THE REASONS FOR EXCLUDING THESE WOMEN FROM COVERAGE BY THE ORIGINAL
LEGISLATION? DO THESE REASONS HAVE MERIT?

REASON 1: Congress wished to save money.

ANSWER: The U.S. Government does not need to save money at the expense of impoverished middle-aged and older women who have earned their retirement. The amount to be paid annually is small and can be expected to decrease to nothing over time.

REASON 2: Congress was concerned that diversion of part of the survivor annuity to a former spouse would cause current wives to lose the support they had anticipated.

ANSWER: Like Social Security, this legislation would provide an eligible FS spouse with a retirement annuity, its amount determined on the basis of the former husband's earnings, without regard to separate entitlements of any other wife the employee may have had.

REASON 3: Some members of Congress believed that the former wife was cared for adequately under the terms of the divorce settlement; therefore, providing a survivor annuity would only be giving her duplicate protection.

ANSWER: This supposition flies in the face of facts, even if alimony was awarded and paid. At best, alimony ceases with the employee's death, so the only possibility would be for the FS officer to have accumulated and transferred sufficient income-producing assets to support his former wife after his death. FS officers do not earn enough from their government employment to be able to transfer such assets, and the day is past when the Foreign Service recruited significant numbers of individuals with private means.

CAN FOREIGN SERVICE WIVES DIVORCED OR WIDOWED BEFORE THE EFFECTIVE DATE OF THE
1980 ACT EXPECT TO BE HELPED BY THE PROVISIONS OF THE ACT?

The State Department reported in 1979 that 95 percent of retired married FS employees had elected a survivor annuity, but the Department lacked figures on the proportion that had elected a full rather than a partial annuity. Analogous figures for the Civil Service, where a comparable proportion of married male retirees provide a survivor annuity, show that fewer than 5 percent of those making the election chose to provide a partial annuity. If the FS retirees have made similar choices on the amount of survivor benefit, as seems likely, the overwhelming majority of married retirees have already committed their full survivor annuity, and there is nothing left for their former wives.